

## **SECTION 11      NON-CONFORMING PARCELS, USES AND STRUCTURES**

### **11.1    Intent:**

1.      Within the districts established by this regulation or amendments thereto, there exist parcels, structures, uses of land and structures, and characteristics of use which were lawful before this regulation was adopted or amended, but which would be prohibited, regulated, or restricted under terms of this regulation or future amendments. It is the intent of this regulation that non-conformities shall not be enlarged upon, expanded or extended, nor used as grounds for adding other structures or uses prohibited elsewhere in the same district. The only exception to this intent is for the continuance of an existing side-yard setback for additions to existing single-family dwellings, where it is proven by the applicant that there was conformance with any existing setback regulations at the time the home was built, as provided by Section 10.2.1(G).
2.      Non-conforming uses are declared by this regulation to be incompatible with permitted uses in the district involved. However, to avoid undue hardship, nothing in this regulation shall be deemed to require a change in the plans, construction or designated use of any building on which actual construction was lawfully begun prior to the effective date of adoption or amendment to this regulation, and upon which actual building construction has been carried on diligently. Actual construction is defined to include the placing of construction materials in permanent position and fastened in a permanent manner. Where excavation or demolition or removal of an existing building has been begun preparatory to rebuilding, such excavation or demolition or removal shall be deemed to be actual construction, provided that work shall be carried on diligently.

### **11.2    Non-Conforming Parcels of Record:**

1.      In any zone, structures permitted in said zone may be erected on any non-conforming parcel which was of record on the effective date of this regulation. All other requirements and restrictions of the district apply to a parcel of record that does not meet parcel area or parcel width requirements.
2.      A non-conforming parcel of land shall not be divided or changed in any way to reduce the area of the original parcel or increase its non-conformity.

### 11.3 Non-Conforming Uses of Land:

Where at the time of passage of this regulation lawful use of land exists which would not be permitted by the regulations imposed by this regulation, the use may be continued so long as it remains otherwise lawful, provided:

1. No such non-conforming use shall be enlarged or increased, nor extended to occupy a greater area of land than was occupied at the effective date of adoption or amendment of this regulation.
2. No such non-conforming uses shall be moved in whole or in part to any portion of the parcel other than that occupied by such use at the effective date of adoption or amendment of this regulation.
3. If any such non-conforming use of land ceases for any reason for a period of more than ninety (90) days, any subsequent use of such land shall conform to the requirements specified by this regulation for the district in which such land is located.
4. No additional non-conforming structure in connection with the requirements of this regulation shall be erected in connection with such non-conforming uses of land.

### 11.4 Non-Conforming Structures:

Where a lawful structure exists at the effective date of adoption or amendment of this regulation that could not be built under the terms of this regulation by reason of restriction on parcel area, parcel coverage, height, yards, its location on the parcel, or other requirements concerning the structure, such structure may be continued so long as it remains otherwise lawful, subject to the following provisions:

1. No such non-conforming structure may be altered or enlarged in any way which increases its non-conformity, with the exception stated in Section 11.1. However, any structure or portion thereof may be altered to decrease its non-conformity.
2. Should such non-conforming structure or non-conforming portion of a structure be destroyed by catastrophic event, it may be reconstructed if it is rebuilt in substantially the same manner as it existed prior to destruction and does not require prior approval by the Commission. Any use or structure which is not substantially the same as the original use or structure must conform with the applicable provisions of this regulation.
3. Should such structure be moved for any reason for any distance whatever, it shall thereafter conform to the regulations for the district in which it is located after it is moved.

#### 11.5 Non-Conforming Uses of Structures and Buildings:

If lawful use of a structure exists at the effective date of adoption or amendment of this regulation that would not be allowed in the district under the terms of this regulation, the lawful use may be continued so long as it remains otherwise lawful, providing that:

1. No existing structure devoted to a non-conforming use shall be enlarged, extended, constructed, or structurally altered, unless the use is changed to a permitted use.
2. Any non-conforming use may be extended to any other part of a structure designed for such use, but no such use may be extended in any way to occupy land outside the structures.
3. Non-conforming use of building, structures, or premises may be changed to another non-conforming use, provided that a conditional use permit is obtained from the Commission following the procedures of Section 12 of this regulation. In determining whether or not to grant the conditional use permit, the Commission shall determine that the proposed use is equally appropriate or more appropriate to the District than the existing non-conforming use.
4. Any structure, or structure and premises, in or on which a non-conforming use, if superseded by a permitted use, shall thereafter conform to the regulations of the district in which it is located, and the non-conforming use may not thereafter be resumed.
5. Whenever a non-conforming use of a structure or a premises ceases, the structure or premises shall not thereafter be used except in conformance with the regulations of the district in which it is located. The term "ceases" as used in this subsection shall mean that the activity in question has not been in operation for a period of ninety (90) days.
6. If a non-conforming use is destroyed by catastrophic event, it may be reconstructed if it is rebuilt in substantially the same manner as it existed prior to destruction. Reconstruction of a non-conforming use does not require prior approval of the Commission. Any use which is not substantially the same as the original use must conform with applicable provision of this regulation.

#### 11.6 Repairs and Maintenance:

On any non-conforming structure or portion of the structure containing a non-conforming use, work may be done on ordinary repairs and fixtures, wiring, plumbing, or repair or replacement of non-bearing walls, to an extent not exceeding 10 percent of the replacement value of the building in any one year, provided that such work does not increase the cubic content of the building, with the exception stated in Section 11.1.

Nothing in this regulation shall be deemed to prevent the strengthening or restoring to a safe condition of any building or part thereof declared to be unsafe by any official charged with protecting the public safety, upon order of such official.

11.7 Conditional Uses:

Conditional uses provided for under Section 12 of this regulation shall not be deemed a non-conforming use in the district in which it is permitted.

11.8 Determination of Status of Non-Conforming Land Uses and Structures:

It shall be the responsibility of the Zoning Enforcement Agent to determine the status of non-conforming land uses and structures. If the Zoning Enforcement Agent determines that a use or structure meets the applicable criteria of Sections 11.1, 11.3, 11.4 and 11.5 above, the use or structure shall be deemed an Approved Non-Conforming Land Use or Approved Non-Conforming Structure. The following procedure shall be followed to determine the status of non-conforming land uses and structures.

1. The owner of record of the subject use or structure shall make an application for a determination of the status of a land use or structure.
2. It shall be the burden of the applicant to prove entitlement to approved non-conforming status by furnishing the Zoning Enforcement Agent with a preponderance of supporting information. Such information may include, but is not limited to, septic or sewer hook-up permits, building permits, business licenses and dated photographs.
3. The Zoning Enforcement Agent shall determine on a case-by-case basis whether a land use or structure is an existing non-conforming use or existing non-conforming structure.
4. Appeals of the Zoning Enforcement Agent's decision shall be made in accordance with the provisions of Section 15.3.
5. The Zoning Enforcement Agent shall maintain a record of existing non-conforming uses and structures as such information becomes available.

## SECTION 12     **CONDITIONAL USES**

### 12.1     Intent:

The intent of conditional use permits is to provide for specific uses, other than those specifically permitted in each district, which may be appropriate under certain safeguards or conditions.

### 12.2     Conditional Use Requirements:

No structure or land may be used for any purpose in any district where such use is not a permitted use, unless such use is listed as a conditional use in that district and approval for that use is obtained through the proper procedure.

Conditional use permits shall be granted only by the Commission, when its findings are that:

1.     The use conforms to the objectives of the development plan and the intent of this regulation; and
2.     Such use will not adversely affect nearby properties or their occupants; and
3.     Such use meets density, coverage, yard, height, and all other requirements of the district in which it is to be located, unless otherwise provided for in this regulation; and
4.     Public hearings have been held, after the required legal notices have been given and the public has been given a chance to be heard upon the matter.

### 12.3     Conditional Use Procedure:

1.     All applications for conditional use permits shall be filed with the Gallatin County Planning Office, accompanied with the appropriate filing fee. All conditional use permit applications must be complete before the Commission is required to consider the permit. An application is complete when it contains all of the information necessary for the Zoning Enforcement Agent to decide whether or not the development, if completed as proposed, will comply with all of the requirements of this regulation and the development plan.
2.     The Commission shall then cause to be made such investigation of facts bearing on the application in order to provide the necessary information to assure that the action on each application is consistent with the intent and purpose of this regulation and the development plan.

3. Upon completion of such investigation the Commission shall hold a public hearing to gather needed facts from all interested parties. The Commission may continue such hearing, if need be, to take additional information. Thereafter, the Commission shall either approve or deny the application. A letter shall be sent to the applicant stating either conditions of approval or reasons for denial.
4. Notice of public hearing for conditional use permits shall be published at least once, fifteen days prior to the hearing in a newspaper of general circulation. Adjacent property owners shall be notified by certified mail.

#### 12.4 Conditional Approval:

The Commission may make the granting of a conditional use permit subject to reasonable limitations or conditions as it may deem necessary to enhance the appearance of the property, to reduce any adverse effects on nearby property or residences, to preserve the character of the area or to make it more acceptable in other ways. Said conditions may include but not be limited to the following:

1. Special setbacks, yards, open spaces, and buffers;
2. Fences and walls;
3. Lighting;
4. Regulation of signs;
5. Regulation of vehicular ingress and egress;
6. Regulation of time of certain activities;
7. Landscaping and maintenance thereof;
8. Time schedule of proposed development;
9. Regulation of odors, smoke, dust, airborne particles, vibration, glare, heat, and noise;
10. Requiring dedication of rights-of-way;
11. Requiring improvements of rights-of-way;
12. Regulation of placement of uses on the property;
13. Regulation of height;
14. Regulation of the nature and extent of the use;
15. Regulation of the length of time such use may be permitted.

#### 12.5 Security:

The Commission may require guarantees in the form of bonds, cash deposits, and/or other evidences of compliance in order to secure compliance with conditions imposed.

#### 12.6 Expiration:

All conditional use permits issued for a definite term shall automatically expire at the end of the term.

#### 12.7 Authorized Use:

For purposes of this regulation, a conditional use permittee shall not be considered as engaging in the authorized use on the site until the following conditions are satisfied:

1. Buildings proposed for construction in connection with the proposed use are in the process of actual construction on the site; or
2. If remodeling proposed for existing buildings in connection with the proposed use has actually been commenced on the site; or
3. If no construction or remodeling is contemplated, then the permittee must be regularly engaged on the site in performing the services or in selling the goods, materials, or stocks in trade of the use, and has secured all necessary federal, state, and local permits and licenses.

#### 12.8 Revocation or Modification of Conditional Use Permits:

1. A conditional use permit may be revoked or modified by the Commission only under the following circumstances:
  - A. A substantial change of conditions has occurred from the time that the permit was granted; and
  - B. Revocation or modification is necessary to protect the health, safety, and welfare of the area in which the property is located or the residents of the County and to preserve the integrity of existing use patterns in the area in which the property is situated; and
  - C. The person holding the permit has not materially changed his position by detrimentally relying on the permit; or
  - D. If the person holding the permit has not complied with the conditions of the permit.
2. The procedures used for the consideration of an application for a conditional use permit shall be used for consideration of modification or revocation.

#### 12.9 Conformance:

No conditional use permit shall be issued unless in conformance with this regulation. Permits issued on the basis of plans and specifications approved by the Commission or Zoning Enforcement Agent only authorize the use, arrangement, and construction set forth in the approved plans and applications, and no other use, arrangement or construction. A use, arrangement, or construction at variance with that authorized through the land use permit shall be a violation of this regulation.

#### 12.10 Permits: Extensions:

1. No later than forty-five (45) days prior to the expiration of the conditional use permit, the holder thereof may file written application with the Commission requesting an extension of time thereon and setting forth the reasons for such request. Each application shall be accompanied by the appropriate fee.
2. Within five (5) days from receipt of such application for extension, the Planning Department shall send a notice of such application by mail to persons, or their successors in interest of record in the County Clerk and Recorder's office, who received mailed notice of the original application. Attached to the application shall be a notice that any person objecting to the extension shall, within fifteen (15) calendar days from the date of mailing, notify the Commission of the objection.
3. If any objection is received from those notified, the procedures under Section 12.3 shall be followed.
4. If no objection is received, the Commission may extend the permit for a period equivalent to the original period for which granted, or for one (1) year, whichever is shorter.
5. An extension may only be granted upon finding of fact by the Commission that no change of condition or circumstances would have been grounds for denying the original application.
6. The Commission shall consider requests for extension only once at the end of the approval period. The decision of the Commission shall be final. No further requests for an extension on a project having already requested an extension shall be allowed.